

**REMARKS**

Reconsideration and withdrawal of the rejections of the application respectfully requested in view of the remarks herewith, which place the application in condition for allowance.

**I. Status of Claims and Formal Matters**

Claims 1-10 are pending in this application. Claims 1-3, 7, 8, and 10 have been withdrawn by the Examiner as being drawn to a non-elected invention. Claims 4-6 and 9 have been amended. No new matter has been added.

Claim 4 has been amended to remove dependency on claim 1, which has been withdrawn by the Examiner. Further amendments to claim 4 are as follows:

1. The recitation of  $R^4$  is hydrogen has been added to claim 4, support for which is found, for example, in paragraphs 13, 58 and 72 of the specification, as well as Tables I, V and X.
2. Claim 4 has also been amended to delete the recitation of A is “(C<sub>1</sub>-C<sub>12</sub>)-alkylene or (C<sub>1</sub>-C<sub>12</sub>)-haloalkylene in which last two mentioned groups a methylene moiety is replaced by a group selected from —C(=O)—, —C(=NH)—, —O—, —S— and —NR<sup>15</sup>—, with the proviso that the replacing group is not bonded to the adjacent S(O)<sub>m</sub> group or N atom; or is (C<sub>2</sub>-C<sub>12</sub>)-alkenylene or (C<sub>2</sub>-C<sub>12</sub>)-haloalkenylene”.
3. The recitation of R<sup>5</sup> “when A is (C<sub>1</sub>-C<sub>12</sub>)-alkylene or (C<sub>1</sub>-C<sub>12</sub>)-haloalkylene and R<sup>5</sup> is (C<sub>1</sub>-C<sub>6</sub>)-alkyl unsubstituted or substituted by one or more halogen radicals, one or more of the carbon atoms of R<sup>5</sup> may, together with S(O)<sub>m</sub> and one or more of the carbon atoms of A, form a 5- or 6-membered ring;” has also been deleted from claim 4.
4. The recitation of “or a pesticidally acceptable salt thereof” has been added to claim 4, support for which is found, for example, in paragraphs 92, 162 and 361 of the specification.

Claim 5 has been amended to depend on claim 4, rather than withdrawn claim 1. Further amendments to claim 5 include deletion of recitations of A and R<sup>5</sup> as described above with respect to the claim 4 amendments.

Claim 6 has been amended to depend on claim 4.

Claim 9 has been amended to depend on any one of claim 4-6, rather than originally claimed dependence on claims 1-6, as claims 1-3 have been withdrawn.

No new matter has been added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

## **II. Response to Restriction**

Applicants thank the Examiner for broadening the scope of the elected subject matter for search purposes. The comments of the Examiner regarding withdrawal of claims 14-25 are unclear to the Applicants, as the application recites only 10 claims.

Claims 4 and 5 have been amended to delete referral to non-elected subject matter.

## **III. The Double Patenting Rejections are Overcome**

Claims 4-6 and 9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-4 and 6 of co-pending Application No. 10/570,136 (Publication No. US 2007/0072850A1). Although the claims are not identical, they are allegedly obvious as being drawn to the same art recognized subject matter.

Applicants note that the Examiner's reference to Application No. 10/521,755 is inconsistent with the parenthetical reference to Publication No. US2007/0072850A1, as this publication number corresponds with the '136 Application as previously indicated.

The issue of whether there is indeed double patenting is contingent upon whether the remarks herewith are indeed considered and entered; and, if so, whether the Examiner believes there is overlap with claims ultimately allowed in the application. If, upon agreement as to allowable subject matter, it is believed that there is still a double patenting issue, a Terminal

Disclaimer as to the co-pending Application No. 10/570,136 will be filed for the purposes of expediting prosecution.

Accordingly, reconsideration and withdrawal of the double patenting rejection, or at least holding it in abeyance until agreement is reached as to allowable subject matter, is respectfully requested.

**IV. The Objections are Overcome**

Claims 4-6 and 9 are objected to as being dependent on a non-elected claim.

Claim 4 has been amended to be independent. Claims 5, 6, and 9 have been amended to depend on claim 4.

Accordingly, withdrawal of the Examiner's objections is requested.

**REQUEST FOR INTERVIEW**

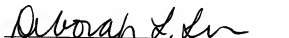
If any issue remains as an impediment to allowance, a further interview with the Examiner and SPE are respectfully requested; and, the Examiner is additionally requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

**CONCLUSION**

In view of the amendments and herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,  
MERIAL LTD.  
FROMMER LAWRENCE & HAUG LLP

By:



Judy Jarecki-Black, Ph.D.

Reg. No. 44,170

Tel. No. (678) 638-3805

Fax No. (678) 638-3350

Thomas J. Kowalski

Reg. No. 32,147

Deborah L. Lu, Ph.D.

Reg. No. 50,940

Tel. No. (212) 588-0800

Fax No. (212) 588-0500